

Environmental Protection Agency

§ 97.406

are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(2) Response. The Administrator will issue a written response to the petition and may request supplemental information determined by the Administrator to be relevant to such petition. The Administrator’s determination concerning the applicability, under paragraphs (a) and (b) of this section, of the TR NO_x Annual Trading Program to the unit or other equipment shall be binding on any State or permitting authority unless the Administrator determines that the petition or other documents or information provided in connection with the petition contained significant, relevant errors or omissions.

§ 97.405 Retired unit exemption.

(a)(1) Any TR NO_x Annual unit that is permanently retired shall be exempt from § 97.406(b) and (c)(1), § 97.424, and §§ 97.430 through 97.435.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the TR NO_x Annual unit is permanently retired. Within 30 days of the unit’s permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b) Special provisions. (1) A unit exempt under paragraph (a) of this section shall not emit any NO_x, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing

by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the TR NO_x Annual Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. Such unit shall be treated, for purposes of applying allocation, monitoring, reporting, and recordkeeping requirements under this subpart, as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.406 Standard requirements.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.413 through 97.418.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.*

(1) The owners and operators, and the designated representative, of each TR NO_x Annual source and each TR NO_x Annual unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.430 through 97.435.

(2) The emissions data determined in accordance with §§ 97.430 through 97.435 shall be used to calculate allocations of TR NO_x Annual allowances under §§ 97.411(a)(2) and (b) and 97.412 and to determine compliance with the TR NO_x Annual emissions limitation and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.430

through 97.435 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) *NO_x emissions requirements.* (1) TR NO_x Annual emissions limitation. (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each TR NO_x Annual source and each TR NO_x Annual unit at the source shall hold, in the source's compliance account, TR NO_x Annual allowances available for deduction for such control period under § 97.424(a) in an amount not less than the tons of total NO_x emissions for such control period from all TR NO_x Annual units at the source.

(ii) If total NO_x emissions during a control period in a given year from the TR NO_x Annual units at a TR NO_x Annual source are in excess of the TR NO_x Annual emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each TR NO_x Annual unit at the source shall hold the TR NO_x Annual allowances required for deduction under § 97.424(d); and

(B) The owners and operators of the source and each TR NO_x Annual unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) TR NO_x Annual assurance provisions. (i) If total NO_x emissions during a control period in a given year from all TR NO_x Annual units at TR NO_x Annual sources in a State (and Indian country within the borders of such State) exceed the State assurance level, then the owners and operators of such sources and units in each group of one or more sources and units having a common designated representative for such control period, where the common designated representative's share of such NO_x emissions during such control period exceeds the common designated representative's assurance level for the State and such control period, shall hold (in the assurance account established for the owners and operators of such group) TR NO_x An-

nual allowances available for deduction for such control period under § 97.425(a) in an amount equal to two times the product (rounded to the nearest whole number), as determined by the Administrator in accordance with § 97.425(b), of multiplying—

(A) The quotient of the amount by which the common designated representative's share of such NO_x emissions exceeds the common designated representative's assurance level divided by the sum of the amounts, determined for all common designated representatives for such sources and units in the State (and Indian country within the borders of such State) for such control period, by which each common designated representative's share of such NO_x emissions exceeds the respective common designated representative's assurance level; and

(B) The amount by which total NO_x emissions from all TR NO_x Annual units at TR NO_x Annual sources in the State (and Indian country within the borders of such State) for such control period exceed the State assurance level.

(ii) The owners and operators shall hold the TR NO_x Annual allowances required under paragraph (c)(2)(i) of this section, as of midnight of November 1 (if it is a business day), or midnight of the first business day thereafter (if November 1 is not a business day), immediately after such control period.

(iii) Total NO_x emissions from all TR NO_x Annual units at TR NO_x Annual sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total NO_x emissions exceed the sum, for such control period, of the State NO_x Annual trading budget under § 97.410(a) and the State's variability limit under § 97.410(b).

(iv) It shall not be a violation of this subpart or of the Clean Air Act if total NO_x emissions from all TR NO_x Annual units at TR NO_x Annual sources in a State (and Indian country within the borders of such State) during a control period exceed the State assurance level or if a common designated representative's share of total NO_x emissions from the TR NO_x Annual units at TR

NO_x Annual sources in a State (and Indian country within the borders of such State) during a control period exceeds the common designated representative's assurance level.

(v) To the extent the owners and operators fail to hold TR NO_x Annual allowances for a control period in a given year in accordance with paragraphs (c)(2)(i) through (iii) of this section,

(A) The owners and operators shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Clean Air Act; and

(B) Each TR NO_x Annual allowance that the owners and operators fail to hold for such control period in accordance with paragraphs (c)(2)(i) through (iii) of this section and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(3) *Compliance periods.*—(i) A TR NO_x Annual unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2012 or the deadline for meeting the unit's monitor certification requirements under § 97.430(b) and for each control period thereafter.

(ii) A TR NO_x Annual unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.430(b) and for each control period thereafter.

(4) *Vintage of allowances held for compliance.* (i) A TR NO_x Annual allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a TR NO_x Annual allowance that was allocated for such control period or a control period in a prior year.

(ii) A TR NO_x Annual allowance held for compliance with the requirements under paragraphs (c)(1)(ii)(A) and (2)(i) through (iii) of this section for a control period in a given year must be a TR NO_x Annual allowance that was allocated for a control period in a prior year or the control period in the given year or in the immediately following year.

(5) *Allowance Management System requirements.* Each TR NO_x Annual allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(6) *Limited authorization.* A TR NO_x Annual allowance is a limited authorization to emit one ton of NO_x during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the TR NO_x Annual Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(7) *Property right.* A TR NO_x Annual allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of TR NO_x Annual allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report NO_x emissions using a continuous emission monitoring system (under subpart H of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.430 through 97.435 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance

with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each TR NO_x Annual source and each TR NO_x Annual unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under § 97.416 for the designated representative for the source and each TR NO_x Annual unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.416 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the TR NO_x Annual Trading Program.

(2) The designated representative of a TR NO_x Annual source and each TR NO_x Annual unit at the source shall make all submissions required under the TR NO_x Annual Trading Program, except as provided in § 97.418. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the TR NO_x Annual Trading Program that applies to a TR NO_x Annual source or the designated representative of a TR

NO_x Annual source shall also apply to the owners and operators of such source and of the TR NO_x Annual units at the source.

(2) Any provision of the TR NO_x Annual Trading Program that applies to a TR NO_x Annual unit or the designated representative of a TR NO_x Annual unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the TR NO_x Annual Trading Program or exemption under § 97.405 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a TR NO_x Annual source or TR NO_x Annual unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[76 FR 48379, Aug. 8, 2011, as amended at 77 FR 10334, Feb. 21, 2012]

§ 97.407 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the TR NO_x Annual Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the TR NO_x Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the TR NO_x Annual Trading Program, is not a business day, the time period shall be extended to the next business day.

§ 97.408 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the TR NO_x Annual Trading Program are set forth in part 78 of this chapter.